

(2024) 05 J&K CK 0034
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 3179 Of 2023

Suhaib Sahil

APPELLANT

Vs

UT Th. J&K Sports Council And Ors

RESPONDENT

Date of Decision : 07-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Jammu And Kashmir Certification Of Outstanding Proficiency In Sports Rules, 2008 —
Rule 2(A)(ii), 3

Citation : (2024) 05 J&K CK 0034

Hon'ble Judges : Rajesh Sekhri, J

Bench : Single Bench

Advocate : B. A. Bashir, Falak Bashir, Jehangir Dar, Syed Musaib, M. Ashraf Wani

Final Decision : Dismissed

Judgement

Rajesh Sekhri, J

1. Pursuant to notification No. 02 of 2023 dated 25.05.2023, for admission to Ph.D Programme (Full Time/Part time), issued by the respondent-Islamic University of Science and Technology, Awantipora, petitioner applied for admission in the discipline of Civil Engineering (Full Time) under Sports Category. Provisional merit list of Ph.D Programme for academic session 2022-23 for Civil Engineering came to be issued by the respondent-University, in which, petitioner was shown at Serial No. 06 under the category "Sports". Since one Aijaz Ahmad Wani, figuring at Serial No. 04 of the said provisional merit list, did not join, sports certificates of the petitioner were sent by respondent No. 06 i.e. Assistant Registrar Academics of the respondent-University for verification to the Secretary J&K Sports Council Srinagar-respondent No.2. However, the Administrative Officer of the respondent-Sports Council, vide its communication No. SC/2407/7270-72 dated 09.10.2023, impugned in the present petition, conveyed the respondent-University that petitioner, having single participation at the National level, is not eligible for selection under the Sports Category.

Consequently, respondent No.7 came to be provisionally selected in the Open Merit Category by the respondent-University vide impugned notification No. 05 of 2022-23 (Ph.D Programme) dated 30.10.2023.

2. Petitioner has invoked writ jurisdiction of this Court, in terms of Article 226 of the Constitution of India, for quashment of aforesaid communication dated 09.10.2023 issued by respondent-Sports Council, by virtue of which, he was found ineligible for selection under the Sports category as also notification dated 30.10.2023 issued by respondent-University whereby private respondent No. 7 has been selected for the discipline in the Open Merit Category. Petitioner, consequently, seeks mandamus to the respondent-University for his admission to the Ph.D programme in Civil Engineering under the Sports category.

3. Petitioner has assailed impugned communication dated 09.10.2023 issued by respondent-Sports Council primarily on the ground that it is in flagrant violation of the Government Order No. 808-GAD of 2008 dated 17.06.2008. According to the petitioner, he is eligible for consideration for selection under the Sports category, on the basis of certificate issued by the sports Council, in terms of Rule 3 of J&K Certification of Outstanding Proficiency in Sports Rules 2008.

4. Petitioner has also questioned the impugned communication of Sports Council on the ground that since his sports certificates were sent to the Sports Council for verification only, therefore, it could not go beyond verification and declare him ineligible for selection.

5. It is also contention of the petitioner that since the notification of the respondent-University only asked for a certificate under Sports category and not for certificates of participation of Sportspersons in two National events, therefore, petitioner, having complied with the said condition, is entitled to admission in the respondent-University under the Sports Category.

6. Per contra, the respondent-Sports council is affront with the contention that no legal, constitutional or fundamental right of the petitioner has been violated so as to clothe him to invoke extraordinary jurisdiction of this Court. According to the respondent-Sports Council, two sports certificates of the petitioner in the discipline of Ball Badminton with respect to (i) participation in North Zone Ball Badminton Championship held at Amballa from 13th to 15th April, 2023 and (ii) participation in First Youth National Badminton Championship held at Bihar from 25th to 27th March, 2023, were examined on the analogy of criteria laid down in Government Order No. 808-GAD of 2008 dated 17.06.2008, as amended vide Government Order No. 946-GAD of 2008 dated 15.07.2008 and petitioner having single participation at the National level, was found not eligible for selection. Accordingly, respondent-University was informed through impugned communication.

7. Respondent-University has contended that in response to the admission notification, 15 candidates applied for admission and all of them were found eligible, subject to verification of their credentials. It was mentioned in the

admission notification that mere appearance in the list of qualified candidates, shall not entitle a candidate to final selection if he/she is found otherwise ineligible. It is further contended that out of aforesaid 15 candidates, only 11 candidates appeared in entrance examination, out of which, 08 candidates qualified in the entrance. This was followed by interview, in which, 06 candidates appeared and, accordingly, a merit list was prepared by the University. According to respondent-University, as per reservation break up policy adopted by it, the share attached to RBA is 10% and share attached to Sports category is 1%. Going through the merit list, University had two candidates, having the reservation. Candidate at Serial No. 04 in the merit list was selected having scored more than the petitioner. However, since the said candidate did not join, petitioner was selected by the University and his sports certificates were forwarded to the respondent-Sports Council for authentication and verification. Respondent-Sports Council vide impugned communication dated 09.10.2023 intimated the respondent-University that petitioner is not eligible for claiming reservation under Sports Category, therefore, respondent-University was left with no option but to offer admission to some other meritorious candidate. According to respondent-University, since there was no other candidate in the merit list, who could have been offered a seat for admission in the reserved category, therefore, in exercise of its powers vested in it in view of Prospectus 2023, by virtue of which, University reserves its right to exercise that in case there is non-availability of candidate(s) to fill seats under a particular reserved/self-financing category, such seat(s) shall be shifted to open merit quota, private respondent was selected for admission.

8. It is also contention of the respondent-University that class work has already commenced from November, 2023 which is likely to get over within a month, therefore, it would not be easy for the respondent-University to take any candidate for Ph.D. course during the end of the session. Respondents have prayed for dismissal of the petition.

9. Heard arguments and perused the record.

10. Uncontroverted facts of the case are that petitioner applied in the respondent-University for admission to Ph.D Programme in the discipline of Civil Engineering (Full Time) under "Sports Category". Petitioner figures at Serial No. 6 in the "Sports Category" in the provisional merit list, issued by the University, for the academic session 2022-2023. It is pertinent to mention that two candidates were selected by the respondent-University in the reserved category and since candidate figuring at Serial No. 4 of the provisional merit list, namely, Aijaz Ahmad Wani, did not join, sports certificates of the petitioner were sent by the Assistant Registrar Academics of the respondent-University to Secretary, J&K Sports Council, Srinagar for authentication, who, vide impugned communication dated 09.10.2023 conveyed the University that petitioner was not eligible for selection under the "Sports Category". As a result whereof, vide impugned notification dated 30.10.2023, private respondent has been selected for the

discipline in the open merit category.

11. Petitioner has assailed the impugned notifications; dated 09.10.2023 and 30.10.2023, primarily on two counts; one that it is violative of Government Order No. 808-GAD of 2008 dated 17.06.2008 and he is eligible for selection under Sports Category in terms of Rule 3 of the Jammu and Kashmir Certification of Outstanding Proficiency in Sports Rules 2008 (Rules of 2008, for short) and two that since his sports certificates were forwarded to the respondent-Sports Council for authentication only, it exceeded its jurisdiction by declaring him ineligible for selection.

12. Countervailing the stand taken by the petitioner, it is contention of the respondent-University that sports certificates submitted by the petitioner were examined on the analogy of criteria laid down in the aforesaid Government Order dated 17.06.2008, as amended vide Government Order No. 946-GAD of 2008 dated 15.07.2008, but the petitioner having single participation at the National level, was not found eligible for selection. The respondent-J&K Sports Council is affront with the contention that it is the sole authority for certifying the eligibility of a candidate seeking admission in professional courses under the "Sports Quota".

13. Mr. B. A. Bashir, learned Senior Counsel appearing for the petitioner has strenuously argued that as per clause 6.3.4 of the J&K Sports Policy 2022 (J&K Sports Policy, for short), reservations to sports persons in University, having representation at National or International level is available and since it is nowhere mentioned in the said clause that a sports person must have participation in two or more disciplines at National championship, therefore, petitioner having participated at least in one National championship is entitled to admission in the respondent-University.

14. The question which falls for consideration, in the present case, is whether every sportsperson with mere representation at a National or International level is entitled to the reservation under the J&K Sports Policy, regardless of his performance, position, proficiency or talent. The answer to this question is emphatic "No" for the following reasons.

15. A careful perusal of the Scheme of J&K Sports Policy would indicate that it provides for broader Guidelines for regulation of reservation in professional courses/colleges and appointment as also award and financial assistance to "Outstanding Sportspersons". However, the method and manner to be followed for exercising powers in terms of the said policy, in order to determine the eligibility of an individual applying under the Sports category, traces its origin to the aforesaid Government Order dated 17.06.2008. It appears that pursuant to the direction of Hon"ble Supreme Court in "State v. Harleen Singh and others; SLP No. 4669 of 2006", Rules of 2008, for grant of certificates in favour of "candidates possessing outstanding proficiency in sports", came to be framed by the Government of J&K by virtue of aforesaid Government Order of 17.06.2008.

16. Case of the petitioner is that reservation in University academic/technical courses is available to a sportsperson with mere representation at National/ International level in terms of clause 6.3.4 of the J&K Sports policy and it is nowhere mentioned in the said clause that a candidate must have participated in two or more events of the same discipline and since petitioner has participated at least in one National championship, therefore, he is entitled to be considered for admission in the University. Clause 6.3.4 of the J&K Sports Policy reads as under:

"6.3.4 Reservations to sportspersons in University Academic/Technical courses having representation at National or international level shall also be made available."

17. A plain reading of clause 6.3.4, on first blush would indicate that mere participation or representation of a sportsperson at a National or International level shall make him entitled to reservation in University Academic/technical courses.

18. However, it is pertinent to mention that "candidates possessing outstanding proficiency" has been defined in the definition Clause 2(A)(ii) of the Rules of 2008, which reads as under:

"2(A)(ii) A person who has participated and secured one of the first three positions in the individual events or was a member of the team which obtained first or 2nd position in the National Championship for Junior or Senior events in any sports or games as mentioned in the Schedule I annexed to these rules for such of the courses where the prescribed qualification is 10+2."

19. Significantly, Rules of 2008 came to be amended from time to time vide Government Orders No. 946-GAD of 2008 dated 15.07.2008 and 1090-GAD of 2008 dated 14.08.2008. In terms of Government Order No. 1090-GAD of 2008 dated 14.08.2008 (hereinafter referred to as the Amended Rules of 2008), the aforesaid sub clause (ii) of clause 2(A) of Rules of 2008 was substituted by the following clause:

"(ii) A person who has participated and secured one of the first three positions in the individual events or was a member of the team which obtained 1st, 2nd or 3rd position or has participated twice or more in the same discipline in the National Championship in any sports or games as mentioned in the Schedule I annexed to these rules for such of the courses where the prescribed qualification is 10+2."

20. It is evident from the definition of "Candidates possessing outstanding proficiency" as defined in the Amended Rules of 2008 that a sportsperson who has participated and secured one of the first three positions in the individual events or was a member of the team having obtained 1st, 2nd or 3rd

position or has participated twice or more in the same discipline in the National championship in any sports or games as mentioned in the Schedule I annexed to the said rules, is considered as a candidate having outstanding proficiency. Be it

noted that it is none of the case of the petitioner that he participated and secured one of the first three positions in the individual event or team event at a National championship.

21. Clause 6.3.4 of the J&K Sports Policy cannot be read in isolation and if the said clause is read in conjunction with Rule 2(A)(ii) of Rules of 2008 read with Amended Rules of 2008, it is manifestly clear that petitioner is not eligible for selection under the Sports Category, for the simple reason that he has neither participated and secured one of first three positions in the individual events or the team event in a National championship. Petitioner cannot be allowed to read in between the lines of a particular policy or a rule to claim benefit under the Sports Category. Therefore, impugned communication dated 09.10.2023 issued by the respondent-Sports Council, by virtue of which, petitioner was found ineligible for selection under the Sports category cannot be termed as violative of Rules of 2008 read with Amended Rules of 2008.

22. An interesting aspect of the matter, which cannot be lost sight of is that according to the petitioner, a single representation at the National level shall suffice to claim benefit of reservation in view of clause 6.3.4 of J&K Sports Policy. However, it is pertinent to mention that petitioner, at the time of applying for admission in the respondent-University, submitted two sports certificates, to claim the benefit, which is sufficient to indicate that the petitioner, at the time of applying for admission in the respondent-University, was aware of the rule position. Since one of the certificates submitted by the petitioner pertains to Zonal representation, therefore, he has been rightly declined the benefit of reservation by the respondent-Sports Council. In this view of the matter, petitioner cannot be heard to say that mere single representation or participation at the National level in a sports event shall be sufficient to claim benefit of reservation for admission in a professional course in a University.

23. Learned Senior counsel for the petitioner has next argued that since sports certificates of the petitioner were submitted to the respondent-Sports council for authentication only, therefore, it could not go beyond authentication/correction or otherwise of the certificates to declare the petitioner ineligible.

24. It is, however, contention of the respondent-Sports Council that as per clause 6.3.3, Sports Council is the sole authority to decide eligibility of a candidate applying under the Sports category. Clause 6.3.3. reads as under:

"6.3.3. The J&K Sports Council shall recommend the criteria to the Government for adoption and will be the sole authority for certifying the eligibility of the candidates seeking admission in professional courses under sports quota."

25. It is true that sports certificates of the petitioner were submitted to the respondent-Sports Council for authentication only, however, a plain reading of rule 6.3.3 of the J&K Sports Policy would indicate that role assigned to Sports Council is not confined to examination of authenticity or genuineness or otherwise of a sports certificate, but it is the sole authority to certify the

eligibility of a candidate seeking admission in professional courses under the "Sports Quota". In other words, respondent-Sports Council is obliged to verify and authenticate as to whether the certificates issued to a candidate fall within the purview of policy of the Government in vogue. Petitioner submitted two certificates in the discipline of Ball Badminton with respect to (i) participation in North Zone Ball Badminton Championship held at Ambala from 13th to 15th April, 2018, which is a Zonal participation and (ii) participation in First Youth National Badminton Championship held at Bihar from 25th to 27th March, 20, which, of course, is a National participation/representation of the petitioner and when both the certificates submitted by the petitioner were examined on the analogy of criteria laid down in the Rules of 2008, petitioner was rightly found not eligible because of having single participation at the National level.

26. For what has been observed and discussed above, the answer to the question posed in the present case is that every sportsperson with mere representation at a National or International level, ipso facto would not be entitled to reservation under the J&K Sports Policy, regardless of his performance, achievement, position, proficiency or talent. The legislative intent of the rule making authority, is evident from the use of words

"Outstanding" and "Proficiency", in the Rules of 2008 that reservation is available only to the sportspersons, who have not only achieved an outstanding performance but are proficient or have excelled in a particular sports or achieved or secured one of the first three positions or participated twice or more in the same discipline in the National championship to their credit. The "Sports Quota", also known as "Sports Representation", is a policy devised by the Government and used by the educational institutions to reserve a particular percentage of seats or positions for individuals, who have achieved excellence in sports. J&K Sports policy aims to promote "Outstanding" and "Proficient" sportspersons by providing them with opportunities for education, employment and/or other benefits. Petitioner, in the present case, with a single representation in Ball Badminton at the National level has been rightly declared ineligible by respondent-Sports Council and denied admission by respondent-University as he fails to meet the criteria laid down in the J&K Sports Policy and Rules of 2008 read with Amended rules of 2008.

27. Having regard to the aforesaid reasons, I do not find any illegality or impropriety in the impugned communication dated 09.10.2023 of the respondent-Sports Council, by virtue of which, it was conveyed to the respondent-University that petitioner was not eligible for selection under the sports category. Consequently, I do not find any illegality in the impugned notification dated 30.10.2023, vide which, petitioner has been denied selection in the respondent-University and private respondent No. 7 has been selected.

28. In view of the above, present petition, being devoid of merit, is dismissed.